

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THUY VO,)	
)	
Plaintiff,)	Civil Action No. 18-1364
)	District Judge J. Nicholas Ranjan
v.)	Magistrate Judge Maureen P. Kelly
)	
ROBERT GILMORE, MICHAEL ZAKEN,)	Re: ECF No. 66
and STEPHEN DURCO,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Thuy Vo (“Plaintiff”) initiated this *pro se* prisoner civil rights action pursuant to 42 U.S.C. § 1983 on October 15, 2018. ECF Nos. 1, 8. Plaintiff is incarcerated at the State Correctional Institution at Greene (“SCI-Greene”), and he asserts claims against three SCI-Greene employees. Plaintiff alleges that Defendants violated his Fourth Amendment right to bodily privacy through its policy of video-recording strip searches.

Presently before the Court is Plaintiff’s Motion for an Order Compelling Discovery (“Motion to Compel Discovery”). ECF No. 66. In his Motion to Compel Discovery, Plaintiff asserts that he submitted a Request for Production requesting that he be permitted to inspect “video surveillance footage of the visiting strip-search room” on March 29, 2018 from 12:00 p.m. to 12:30 p.m. and 3:00 p.m. to 3:25 p.m. and on March 31, 2018 from 1:00 p.m. to 1:40 p.m. and 3:00 p.m. to 3:25 p.m. Id. Plaintiff notes that he submitted this request for surveillance footage on September 7, 2019, and he has not been permitted to inspect the footage. Id. He requests that the Court enter an order compelling Defendants to produce these videos for inspection. Id.

In response, Defendants argue that they are not in possession of the video footage for the dates and times specified. ECF No. 71 ¶¶ 12-15. Defendants note that this footage is routinely overwritten after a period of time, and as a result, the videos that Plaintiff seeks no longer exist. Id.

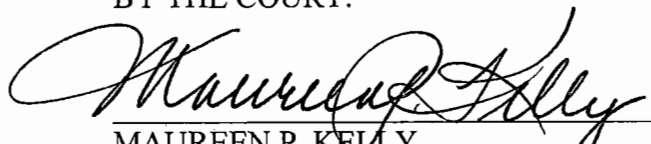
The Court takes notice of the fact that Plaintiff waited over seventeen (17) months, from the two dates of the video surveillance in March 2018 until September 7, 2019 to request production of the videos. The Complaint in this case was not filed until November 27, 2018. ECF No. 8.

Upon review, Plaintiff's Motion to Compel Discovery is denied. The Court cannot compel Defendants to produce videos that do not exist. See Williams v. Wetzel, No. 1:17-cv-179, 2019 WL 1206062, at *2 (M.D. Pa. March 14, 2019) ("It is clear that the court cannot compel the production of things that do not exist.").

WHEREFORE, it is hereby ORDERED on this 23rd day of December, 2019 that Plaintiff's Motion for an Order Compelling Discovery, ECF No. 66, is denied.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72.C.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of this Order to file an appeal to the District Judge which includes the basis for objection to this Order. Any appeal is to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110,

BY THE COURT:


MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc: Thuy Van Vo
KJ 8911
175 Progress Drive
Waynesburg, PA 15370

All counsel of record via CM/ECF.